

# **Exhibit 48**

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Graham Wade – March 16, 2022

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
CASE NO. 18-MD-2865 (LAK)

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IN RE: )  
 )  
 )  
CUSTOMS AND TAX ADMINISTRATION OF )  
THE KINGDOM OF DENMARK )  
(SKATTEFORVALTNINGEN) TAX REFUND )  
SCHEME LITIGATION )  
----- )

C O N F I D E N T I A L

REMOTE VTC VIDEOTAPED EXPERT DEPOSITION UNDER ORAL  
EXAMINATION OF  
GRAHAM WADE

DATE: March 16, 2022

REPORTED BY: MICHAEL FRIEDMAN, CCR

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<p style="text-align: center;">Page 162</p> <p>1       <b>Q</b>   Sorry, I --      2                    MR. OXFORD: Hold on. Greg, you      3                    asked him the question. Please let him      4                    finish.      5       <b>A</b>   Sorry. Can we have the question      6   back again, please?      7       <b>Q</b>   I'll ask another question.      8                    Is it your assertion that all      9   cum ex sales are short sales?      10          MR. OXFORD: Objection. You can      11                    answer.      12          <b>A</b>   By that question, do you mean      13                    generally or in the context of the specific      14                    transactions which I've given opinions on?      15       <b>Q</b>   Let's start generally first.      16          Is it your assertion generally that      17   all cum ex sales are short sales?      18          MR. OXFORD: Object to the form.      19          <b>A</b>   I couldn't possibly give an opinion      20   on all cum ex sales that have ever been done,      21   but my point earlier is that, in my      22   experience, it would be somewhat unusual to      23   do a cum ex sale, because the only situation      24   which, in all my market experience I've ever      25   seen a cum ex sale being done, is in order to</p>	<p style="text-align: center;">Page 163</p> <p>1                    give rise to a tax reclaim on a contract,      2                    which is the contract for delivery of      3                    ex-dividend shares.      4                    And if someone were long      5                    immediately before doing a cum ex, so they      6                    were doing a cum ex out of a long position,      7                    that is not an impossible thing to happen,      8                    but it would be a quite unusual thing to be      9                    done.      10       <b>Q</b>   And what's the basis for that      11                    testimony?      12       <b>A</b>   The basis for that testimony is      13                    being responsible and working in the      14                    structured finance industry for many years.      15       <b>Q</b>   Have you ever executed cum ex      16                    transactions yourself?      17       <b>A</b>   No.      18       <b>Q</b>   Have you, as far as you're aware,      19                    worked for an institution that ever entered      20                    into cum ex transactions?      21          MR. OXFORD: Object to form.      22       <b>A</b>   I believe it's a matter of public      23                    record that Barclays has executed cum ex      24                    transactions, but limited to -- as I say in      25                    my report, the nature of cum ex transactions</p>
<p style="text-align: center;">Page 164</p> <p>1   changed significantly, so not in 2012.      2                    In my experience, prior to my      3   involvement in this case, it was only ever my      4   understanding that cum ex transactions were      5   executed in Germany and prior to the various      6   legislative changes that were made in      7   Germany.      8       <b>Q</b>   Okay. So you, prior to this case,      9   had no understanding of cum ex transactions      10   being executed in any context other than in      11   the German market prior to 2012.      12          Is that right?      13          MR. OXFORD: Object to the form,      14                    misstates his testimony.      15       <b>A</b>   Yeah. My answer was, I think, that      16   Barclays, to my knowledge, only undertook      17   cum ex transactions prior to the legislative      18   changes in Germany and only ever undertook      19   them in respect of German shares, the reason      20   for that being that based on my market      21   experience and extensive understanding of the      22   European securities, no market participant or      23   advisor who I ever dealt with ever considered      24   the outside of those parameters, that a      25   cum ex transaction was effective.</p>	<p style="text-align: center;">Page 165</p> <p>1                    So maybe they executed them      2   in -- nobody at Barclays would have executed      3   them. Let's put it that way.      4       <b>Q</b>   Okay. And so is your familiarity      5                    with cum ex transactions limited to the      6                    manner in which Barclays has executed them?      7          MR. OXFORD: Object to the form.      8       <b>A</b>   No. I -- over the course of my      9                    time at Barclays, you are not just aware of      10                    transactions that Barclays is executing. You      11                    are aware of a wide range of practice going      12                    on in the market.      13       <b>Q</b>   Okay. Well, what other executions      14                    of cum ex transactions are you aware of in      15                    the market?      16          MR. OXFORD: Object to form.      17       <b>A</b>   I think my -- my point is that up      18                    until no later than the beginning of 2012,      19                    there were a wide range of      20                    counterparties -- I think this is a matter of      21                    public record -- who were undertaking cum ex      22                    transactions in Germany based on their      23                    understanding of a very specific procedural      24                    rule, but that outside of Germany and outside      25                    of that very specific procedural rule, there</p>

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<p>1       A   There's -- there's two separate      2 questions. There's who does the ultimate tax      3 liability fall on, and who is responsible for      4 the withholding of tax.</p> <p>5           My general understanding is that      6 the -- it's the issuer or its paying agent      7 who is responsible for the withholding of      8 tax. The withholding in general is not      9 always a final tax.</p> <p>10          So the taxation of the income on      11 which that withholding relates is a question      12 of who the recipient is and on all the facts      13 and circumstances around how they      14 receive -- in what basis they receive the      15 income to which it relates.</p> <p>16          Q   So is the process different in the      17 United States than it is in Denmark?</p> <p>18          MR. OXFORD: Object to the form.</p> <p>19          A   Almost certainly there will be a      20 number of differences in how that operates.</p> <p>21          Q   But when you say "almost      22 certainly," does that mean you're almost      23 certain or what do you mean by that?</p> <p>24          A   I mean that in my -- in my      25 experience of looking at a number of</p>	<p>1       different tax jurisdictions, it is -- it      2 would be almost inconceivable to me that the      3 Danish payment and collection process is      4 exactly the same as the U.S. payment and      5 collection process.</p> <p>6          Q   But you don't know?</p> <p>7            MR. OXFORD: Objection to form.</p> <p>8          A   I -- no, I'm not giving an opinion      9 on the exact details of either the U.S. tax      10 administration system or the Danish tax      11 administration system. Hopefully, I've been      12 clear that that's not something I'm here      13 giving an opinion on.</p> <p>14          But I think you previously asked      15 me, in general terms, what is my      16 understanding of how these processes work,      17 which is what I was trying to answer.</p> <p>18          Q   Okay. So you're not giving a      19 specific opinion on the details of the      20 administration of the Danish tax system.</p> <p>21          Are you giving a general opinion on      22 the administration of the Danish tax system,      23 sir?</p> <p>24          MR. OXFORD: Object to the form.</p> <p>25          A   I am not giving any opinion as</p>
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<p>1       regards Danish tax law or the administration      2 of the Danish tax system.</p> <p>3          Q   I'd ask you to turn if you could      4 to --</p> <p>5          MR. OXFORD: Oh, sorry, Mike. The      6 witness is asking to take a break.      7 We've been going a little over an hour.      8 Can we take a five to ten-minute break?</p> <p>9          MR. BONGIORNO: Sure.</p> <p>10         THE VIDEOGRAPHER: Stand by. The      11 time is 2:55 p.m. New York time and      12 we're going off the record.</p> <p>13         (Brief recess taken.)</p> <p>14         THE VIDEOGRAPHER: Stand by. The      15 time is 3:15 p.m. New York time and      16 we're back on record.</p> <p>17         MR. BONGIORNO: So just to clarify      18 on the record, we have marked as      19 Exhibit 5100, the opening Carr report;      20 5101, the Carr rebuttal report; and      21 5102, the Carr reply report.</p> <p>22         (Whereupon the above mentioned was      23 marked for identification.)</p> <p>24         Q   Mr. Wade, I would like you to go to      25 your reply report, which I think is</p>	<p>1       Exhibit 5003. You probably have that      2 somewhere nearby.</p> <p>3          A   Yeah, got it.</p> <p>4          Q   For some reason I'm not seeing you      5 on the screen, so hopefully -- well, I don't      6 know, hopefully or not, but perhaps you're      7 seeing me, but I'm not seeing you.      8           I don't know what we can do about      9 that.</p> <p>10         A   I'm seeing you okay.</p> <p>11         Q   Oh, there we go, there we go.      12 You're back. Thank you.</p> <p>13         So you have your reply report in      14 front of you, sir?</p> <p>15         A   I do.</p> <p>16         Q   Okay. Could you go to      17 Paragraph 240, parenthesis "2?"      18         Sorry. It's not a parentheses.      19 It's just a number "2." It's on Page 114.</p> <p>20         MR. OXFORD: Yeah, I've got that.</p> <p>21         Q   Do you have that in front of you?</p> <p>22         A   I do.</p> <p>23         Q   Okay. I'd like you to read that      24 paragraph to yourself, and I want to -- and      25 then I'm going to focus you on the last</p>

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<p>1 sentence.</p> <p>2 Let me know when you've completed</p> <p>3 reading the paragraph to yourself.</p> <p>4 A (Witness reviewing.)</p> <p>5 I've read it, yeah.</p> <p>6 Q I'm going to direct your attention</p> <p>7 to the last sentence of that paragraph. I'll</p> <p>8 read it out loud. Then I will have a</p> <p>9 question for you.</p> <p>10 "In particular, there's no basis to</p> <p>11 claim receipt of a dividend (or any test</p> <p>12 reclaim rights which derive from such</p> <p>13 dividend) on what is, in effect, a derivative</p> <p>14 position."</p> <p>15 Do you see that?</p> <p>16 A I do see that.</p> <p>17 Q Okay. Did I read that correctly?</p> <p>18 A I believe so, yeah.</p> <p>19 Q Okay. What do you mean by "a</p> <p>20 derivative position?"</p> <p>21 What does that mean?</p> <p>22 A Well. In the situation that this</p> <p>23 relates to, based on the facts as I've</p> <p>24 referenced in my report, if there are in fact</p> <p>25 no shares, then irrespective of what</p>	<p>1 the -- you know, the pension plan statement</p> <p>2 may show, all they can possibly have is a</p> <p>3 contractual claim against its prime broker,</p> <p>4 which, when I use the word "derivative," I'm</p> <p>5 using that in the market sense to mean if I</p> <p>6 have a derivative in respect of the share,</p> <p>7 that means a -- an asset which derives its</p> <p>8 value from the price of a share, but it is</p> <p>9 not, itself, the share.</p> <p>10 That's all I mean by that.</p> <p>11 Q So by "derivative" you mean</p> <p>12 a -- like a contract with -- a contract where</p> <p>13 there aren't any shares?</p> <p>14 A Yeah. I'm saying that if a -- if a</p> <p>15 prime broker is somehow -- and this would not</p> <p>16 be, in my experience, normal practice -- but</p> <p>17 if somehow a prime broker is representing to</p> <p>18 its client that he's created a position, but</p> <p>19 in fact it never settled that position, then</p> <p>20 if there is any position as between the</p> <p>21 pension plan and its prime broker, it must be</p> <p>22 some kind of contractual derivative, being a</p> <p>23 contract which derives its price from the</p> <p>24 value of a share.</p> <p>25 Q Okay. I want to direct your</p>
<p style="text-align: center;">Page 276</p> <p>1 attention to a different document now.</p> <p>2 If you could go to that Wilmer Hale</p> <p>3 notebook that I think you still have</p> <p>4 somewhere nearby?</p> <p>5 And if you'd go to the Tab 5105.2?</p> <p>6 MR. BONGIORNO: This will be</p> <p>7 Exhibit Number 5105.</p> <p>8 (Whereupon the above mentioned was</p> <p>9 marked for identification.)</p> <p>10 A So I've got 5105. That's the tab.</p> <p>11 Q Is -- do you have something that</p> <p>12 says 5105.2?</p> <p>13 A I don't believe so, no. It goes</p> <p>14 from 5105 to 5106.</p> <p>15 Q Okay. So is there a blue sheet in</p> <p>16 that 5105 in between the pages?</p> <p>17 A There is.</p> <p>18 Q Okay. I'd like you to go to the</p> <p>19 document that's behind the blue sheet.</p> <p>20 Okay? Is that a two-sided</p> <p>21 document?</p> <p>22 A It is.</p> <p>23 Q Okay. And does the back side of</p> <p>24 that document have a Bates number that ends</p> <p>25 in 5320?</p>	<p style="text-align: center;">Page 277</p> <p>1 A It does.</p> <p>2 Q Okay. So I'd like to mark that</p> <p>3 document as Exhibit 5105.</p> <p>4 Okay?</p> <p>5 (Whereupon a discussion was held</p> <p>6 off the record.)</p> <p>7 Q So you have in front of you the</p> <p>8 document that ends in Bates number 5320?</p> <p>9 A The one that says "Cash Equity</p> <p>10 Confirmation."</p> <p>11 Q Exactly. And that is Exhibit 5105.</p> <p>12 So you have that in front of you.</p> <p>13 Do you know whether or not this is</p> <p>14 a document that you looked at in connection</p> <p>15 with the preparation of your reports?</p> <p>16 A I don't specifically know whether</p> <p>17 this is one that I looked at.</p> <p>18 Q Okay. And you can see that this is</p> <p>19 an e-mail from Execution@FGC Securities to</p> <p>20 Adam@Delvian Group.</p> <p>21 Right?</p> <p>22 MR. OXFORD: Object to the form.</p> <p>23 Q Sorry. That's not the case, that's</p> <p>24 the cover e-mail. Okay. I'm sorry.</p> <p>25 The binders have gotten the best of</p>